

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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IN RE: PHARMACEUTICAL	)	MDL No. 1456
INDUSTRY AVERAGE WHOLESALE	)	Master Docket 01-cv-12257
PRICE LITIGATION	)	
	)	
	)	Subcategory 06-11337
THIS DOCUMENT RELATES TO:	)	Civil Action No. 08-cv-10852
	)	
<i>United States of America Ex Rel.</i>	)	
<i>Ven-A-Care of the Florida Keys, Inc.,</i>	)	Judge Patti B. Saris
<i>a Florida Corporation, by and through</i>	)	
<i>its principal officers and directors,</i>	)	
<i>ZACHARY T. BENTLEY and T. MARK JONES,</i>	)	
<i>vs. Actavis Mid Atlantic LLC,</i>	)	
<i>et al.</i>	)	

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Status Report October 1, 2009

Pursuant to the Court's July 17, 2004 Procedural Order, the undersigned counsel for the Plaintiffs hereby submits the following status report to the court listing the status of all motions to date.

Respectfully submitted,

Dated: 10/1/09

By: /s/ Susan Schneider Thomas  
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**Attorneys for Ven-A-Care of the Florida Keys,  
Inc.**

**MDL 1456 Status Report**  
**USA ex rel. Ven-A-Care v. Actavis, et al.**  
**Case No. 08-cv-10852**

**Pending Motions**

On October 30, 2008, the Defendants, Alpharma, Barr, and Ivax filed individual Motions to Dismiss Relator's claims and Mylan filed on behalf of All Defendants filed a Motion to Dismiss Relator's claims.

On January 15, 2009, Plaintiff, Ven-A-Care of the Florida Keys, Inc. filed oppositions to the Defendants' Alpharma, Barr and Ivax Motions to Dismiss and to the Joint Motion to Dismiss Relator's Claims on behalf of all Defendants filed by the Defendant Mylan.

On January 15, 2009, an Amicus Brief was filed by the United States of America in response to the Joint Defendants' Motion to Dismiss.

On January 30, 2009, Defendants Alpharma, Barr and Ivax filed replies to response to Motion to Dismiss and Defendant Mylan on behalf of all Defendants filed a Reply to response to Joint Motion to Dismiss Relator's Claims.

On February 13, 2009, Plaintiff, Ven-A-Care of the Florida Keys, Inc. filed a Sur-Reply to the Joint Motion to Dismiss Complaint.

On February 24, 2009, the Court heard oral argument on the Motions to Dismiss Relator's Claims. The issues were taken under advisement by the Court, following the Court's Order at the hearing for the parties to commence limited discovery on "original source" issues under the False Claims Act.

On March 19, 2009, the parties filed a Joint Motion for Order to Adopt Proposed Limited Case Management Order.

On March 24, 2009, the Court entered a Case Management Order as follows:

1. That the case shall be deemed to be part of the MDL 1456;
2. That by March 23, 2009, each Defendant Group shall identify one counsel for purpose of service of discovery; and Plaintiff designated Susan Schneider Thomas, Esquire of Berger & Montague as counsel for service purposes;
3. That by March 27, 2009, Plaintiff shall produce to Defendants copies of all deposition transcripts and exhibits of Ven-A-Care principals and all documents produced in any AWP litigation, together with disclosure statements provided to the United States pursuant to 31 U.S.C. § 3730(b)(2) and 31 U.S.C. § 3730(e)(4)(B). Plaintiff shall produce to Defendants all other documents concerning or related to the Defendants or to this action that the Plaintiff turned over to the United States government and any other documents upon which Plaintiff may, if necessary, rely to establish that this Court has subject matter jurisdiction over this action pursuant to 31 U.S.C. § 3730(e)(4)(B). Plaintiff shall produce these documents on a rolling basis, with production to be completed by June 5, 2009. Plaintiffs have been producing documents

pursuant to this Order.

4. That by June 15, 2009, Defendants shall serve notice for a Rule 30(b)(6) deposition concerning subject matter jurisdiction pursuant to 31 U.S.C. § 3730(e)(4)(B) and Plaintiff shall designate a corporate representative by June 30, 2009 to provide testimony covered in the notice.

5. That all discovery on original source shall be completed by July 30, 2009; and

6. That the Court shall schedule a hearing and briefing schedule to determine whether there is subject matter jurisdiction under the original source provision of 31 U.S.C. § 3730(e)(4)(A) and (B).

On March 30, 2009, Defendant Mylan filed a Motion for Leave to file Notice of Supplemental Authority, which was granted on April 8, 2008.

On July 30, 2009, the parties filed a Joint Motion to Modify March 19, 2009 Case Management Order requesting the Court extend the time for discovery on the original source question up to and including September 16, 2009.

The parties are commencing with discovery of original source issues, including the deposition of Ven-A-Care's corporate representative pursuant to Federal Rule of Civil Procedure 30(b)(6).

#### **CERTIFICATE OF SERVICE**

I hereby certify that I, Carol Brotstein, paralegal with Berger & Montague caused a true and correct copy of the foregoing Status Report to be served on all counsel of record electronically on October 1, 2009, pursuant to Paragraph 11 of Case Management Order No. 2, by sending a copy to LEXIS File & Serve electronic filing service.

Respectfully submitted,

Dated: 10/1/09

By: /s/ Carol Brotstein

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